

SENATE BILL 3105

By McNally

AN ACT to amend Tennessee Code Annotated, Title 33,
relative to the providers of personal support
services.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 33, Chapter 2, Part 4, is amended by
adding the following language as a new section:

Section 33-2-421.

(a) As used in this section, unless the context otherwise requires:

(1) "Personal support services agency" means a sole
proprietorship, partnership, corporation, limited liability company, or a
limited liability partnership providing personal support services as defined
in this part; and

(2) "Personal support services worker" means an individual who is
providing personal support services pursuant to an arrangement between
the service recipient and a personal support services agency.

(b) In addition to the standards and requirements for personal support
services as established by rules adopted by the department, personal support
services agencies shall comply with the requirements in this section.

(c) Personal support service agencies shall provide to each service
recipient a consumer notice which shall include, at a minimum, the following:

(1) The duties, responsibilities, obligations and legal liabilities of
the personal support services agency to the personal support services

workers and to the consumer. Such description shall clearly set forth the consumer's responsibility, if any, for:

(A) Day-to-day supervision of the personal support services worker;

(B) Assigning duties to the personal support services worker;

(C) Hiring, firing and discipline of the personal support services worker;

(D) Provision of equipment or materials for use by the personal support services worker;

(E) Performing a criminal background check on the personal support services worker;

(F) Checking personal support services worker references; and

(G) Ensuring credentials and appropriate licensure or certification, or both, of a personal support services worker;

(2) A statement identifying the personal support services agency as an employer, joint employer, leasing employer, or non-employer, as applicable, of the personal support services worker along with the responsibility the personal support agency will assume, if any, for the payment of the personal support services worker's wages including overtime pay for hours worked in excess of forty (40) hours in a workweek, taxes, social security, Medicare, workers compensation and unemployment compensation payments;

(3) A statement that, regardless of the personal support services agency's status, the consumer may be considered an employer under various state and federal employment laws, and that, if this is the case, he or she may be held responsible for the payment of the personal support services worker's federal, state and local taxes, social security, Medicare, overtime and minimum wages, unemployment and workers compensation insurance payments;

(4) A list of the forms that the consumer may be required by law to complete and submit as an employer;

(5) The penalties that may be assessed against the consumer in the event that he or she is determined to be an employer but has not fulfilled his or her obligations as an employer; and

(6) The appropriate contact information of the department, including telephone number and address, in the event the consumer has questions concerning the content of the notice.

(d) A personal support services agency shall provide a worker notice to each personal support services worker who is placed with a service recipient. Such notice shall be provided to the personal support services worker before the worker provides any services to a service recipient. The worker notice shall contain, at a minimum, the following information:

(1) The duties, responsibilities, obligations and legal abilities the personal support services agency, the consumer, and the personal support services worker, in the event that the personal support services worker is determined to be an independent contractor. Such description shall include the following information:

(A) A statement as to the party responsible for the payment of the personal support services worker's wages including overtime pay for hours worked in excess of forty (40) hours in a workweek, taxes, social security, Medicare, unemployment and workers compensation insurance; and

(B) A statement identifying which party will be responsible for the personal support services worker's hiring, firing, discipline, day-to-day supervision, assignment of duties and provision of equipment or materials for use by the personal support services worker; and

(2) The appropriate contact information of the department, including telephone number and address, in the event the personal support services worker has questions concerning the contents of the notice.

(e) The notices required by this section shall be signed by persons receiving such notices and retained by the personal support services agency at its office for not less than two (2) years.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.